

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J. by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, DORA STUTLER in her official capacity as Harrison County Superintendent, and THE STATE OF WEST VIRGINIA,

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**PLAINTIFF'S MOTION TO
EXCLUDE THE EXPERT TESTIMONY OF STEPHEN B. LEVINE**

Plaintiff, pursuant to Federal Rules of Evidence 403 and 702, as well as *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), moves the Court to exclude, or to limit in the Court's discretion, the testimony proffered by Defendants' expert, Dr. Stephen B. Levine. This motion is based upon the attached Memorandum of Law, Declaration of Sruti Swaminathan ("Swaminathan Decl."), and the pleadings, records, and papers on file with this Court. Defendants have identified and disclosed an expert report from Dr. Levine and have requested that Dr. Levine provide the following expert opinions: (1) there is no consensus or agreed-upon standard of care

to treat child or adolescent gender dysphoria; (2) transgender identity is not biologically based; and (3) affirming transgender youth and permitting them to transition are experimental therapies.

In support of her Motion, Plaintiff states as follows:

- i. Dr. Levine is not qualified to offer an expert opinion about the medical and scientific communities' understanding of the biological elements of sex nor the proper medical treatment for pre-pubertal transgender children;
- ii. Dr. Levine's opinions that accessing gender-affirming care is experimental and unethical, and that providers are providing "rapid affirmation care," are not based on sufficient facts or data and are not the product of reliable principles and methods; and
- iii. To the extent Dr. Levine's opinions satisfy *Daubert*, his opinions should be excluded under Federal Rule of Evidence 403 because any probative value they may have is substantially outweighed by the danger of unfair prejudice, confusion of the issues, waste of time and undue delay.

For these reasons, Plaintiff respectfully requests that the Court enter an order excluding Dr. Levine's testimony in its entirety or limiting his opinions in accordance with *Daubert* and its progeny.

Dated: May 12, 2022

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Respectfully submitted,
/s/ Loree Stark

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CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 12th day of May, 2022, I electronically filed a true and exact copy of *Plaintiff's Motion to Exclude the Expert Testimony of Stephen B. Levine* with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

Loree Stark

West Virginia Bar No. 12936